

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 60 of 1991

with

SPECIAL CIVIL APPLICATION No 1362 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements? -
  2. To be referred to the Reporter or not? - :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? -
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? -
  5. Whether it is to be circulated to the Civil Judge? : NO  
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M U SHAIKH

Versus

DISTRICT OF EMPLOYMENT  
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Appearance:

1. Special Civil Application No. 60 of 1991  
PARTY-IN-PERSON  
MR SUNDHANSHU S. PATEL for Respondent.
  2. Special Civil ApplicationNo 1362 of 1991  
PARTY IN PERSON.  
MR SUDHANSHU S PATEL for Respondents.
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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision:-02/05/2000

ORAL JUDGEMENT

The petitioner filed Special Civil Application No. 5290/1984 in this Court in which the following five items were raised :

(i) Non-promotion of the petitioner from the present post of Jr. Clerk to the higher post of Senior Clerk while promoting his juniors.

(ii) Refusal or inaction on the part of the authorities in releasing increments in the time scale of Jr. Clerk in the selection grade.

(iii) Punishment meted out to the petitioner in the departmental proceedings on 1-8-1983. The petitioner is contemplating filing an appeal.

(iv) Claim of the petitioner as put forward at exh. 42.

(v) Inaction on the part of the respondent no. 4 in deciding the pending representations moved by the petitioner.

2. The petitioner had one more grievance regarding illegality of the seniority list in the cadre of Jr. Clerks in which the petitioner claims an entry in light of his claim. That may be treated as "ch" grievance in addition to the grievances listed in the order dated 13-1-1985. This Court directed the petitioner to file a fresh representation by way of reminder including the aforesaid points within a week from the date of the order. The third respondent, Director of Employment & Training, Gujarat State, Government Polytechnic Compound, Ahmedabad,, was directed to give personal hearing to the petitioner on the said representation and to decide the representation in accordance with law by a speaking order at the earliest and the petition was disposed by the order dated 18-2-1985 of this Court.

3. Both these petitions arise out of the orders passed by the respondent and the Tribunal in the Appeals and therefore both these petitions are being disposed by this common judgment.

4. In Spl. C.A. No. 60/91 the petitioner sought

for a writ of certiorari for quashing and setting aside the judgment and order dated 14-4-1981 passed in Appeal No. 47/87 and the order dated 20-10-1988 passed in Appeal No. 837/88 of the Gujarat State Civil Service Tribunal, Gandhinagar together with remarks made in paragraphs no. 2 and 3 of the order dated 15-5-1985 and to grant the reliefs (A) to (F) in para 15 of the appeal memo, with costs. While in Spl. C.A. No. 1361/91 the petitioner prayed for writ certiorari quashing and setting aside the judgment and order dated 6-4-1989 passed in Appeal No. 384/88 and the judgment and order dated 27-10-1990 passed in Review Application No. 12/89 of the Gujarat Civil Service Tribunal, Gandhinagar together with Annexure - 3, paras 5 (a) & 6(i) to (vii) of Order Annexure 4/D and annexures 11, 13, 15, 19 and 21 of this petition and other orders followed by the remarks paras 6 (ii), (iii), (v) and (vi) of order Annexure 4/D of the respondent respectively and also to grant the reliefs as prayed for in para 7 (A) to (E) of appeal memo Annexure-4 of Appeal No. 384/88.

5. Initially, the petitioner was appointed as a Jr. Clerk on 27-12-1961. Later on he was confirmed as Jr. Clerk by the order dated 1-3-1966. He was allowed to cross first Efficiency Bar in the cadre of Jr. Clerk on 1-6-1967. Then he was allowed to cross second Efficiency Bar in the cadre of Jr. Clerk on 2-1-1972. He was also given selection grade by the order dated 29-8-1972. Thereafter, the petitioner was promoted to the post of Office Assistant by the order dated 18-12-1973. He held that post from 10-1-1974 to 9-9-1976. The petitioner was reverted to his original post of Jr. Clerk by the order dated 7-7-1976 as one Mr. Modwala was ordered to be reinstated from suspension. The petitioner was again given selection grade by the order dated 27-9-1976. One Mr. D.R. Rawal who was junior to the petitioner was promoted in purely temporary capacity to officiate as Office Assistant (Sr. Clerk) by the order dated 12-11-1976. At that time the petitioner was not promoted as his Confidential Reports were not found satisfactory and the petitioner was superceded. The petitioner filed Appeal No. 47/80 before the Gujarat Civil Service Tribunal, Gandhinagar and challenged the order dated 12-11-1976 whereby the petitioner was superceded by making promotion to Mr. D.L. Rawal who was junior to him. This appeal was filed on 16-1-1980 and the same was heard on 13-3-1981. The tribunal dismissed the appeal on the ground that the Departmental Committee considered the Confidential Reports of the petitioner and petitioner was found not satisfactory for promotion and the order dated 12-11-1976 was upheld by the Tribunal vide its order dated 14-4-1981. The petitioner filed the writ petition

being Spl. C.A. No. 5290/84 before this Court and it was disposed of with certain directions to the authorities concerned on the consent of the parties. The petitioner filed the representation on 21-2-1985 to the respondent - Director in compliance with the order dated 18-2-1985. The petitioner was given personal hearing on 16-4-1985. The respondent - Director rejected the representation on 15-5-1985 against which the petitioner filed Appeal No. 387/88 before the Gujarat Civil Service Tribunal, Gandhinagar. The petitioner was promoted as Office Assistant (Sr. Clerk) by the order dated 15-10-1986 and he was reverted by the order dated 23-9-1988. Appeal No. 387/88 filed by the petitioner was dismissed on 20-10-1989 on the ground that the claim of the petitioner for getting deemed date for promotion with effect from 12-11-1976 was not well founded in view of the judgment dated 14-4-1981 of the Gujarat Service Tribunal, Gandhinagar in Appeal No. 47/80 which was decided on merits. The alternative claim of the petitioner for giving promotion since July October, 1977, September-October 1978, August 1981, June 1983, February 1985 was not well founded. As he was not found fit for promotion during the aforesaid period on the ground of poor performance and adverse remarks in Confidential Reports and the Departmental Inquiry pending against him in which punishment of withholding of increments of one year with future effect was awarded and that punishment was modified to stoppage of one year increment without future effect by the order dated 6-7-1988 in Appeal No. 36/\_\_\_\_\_ by the Gujarat Civil Service Tribunal, Gandhinagar and it was also stated that the petitioner was superceded due to pendency of the domestic departmental inquiry against him by the Departmental Promotion Committee in the meeting held on 21-1-1988.

6. The petitioner appeared in person and argued his case at length. The main contention of the petitioner is that he was given promotion on 18-12-1973 on the post of Office Assistant from the cadre of Jr. Clerk. He was also permitted to cross Efficiency Bar. But he was reverted to the post of Jr. Clerk from the cadre of Office Assistant (Sr. Clerk) by the order dated 7-7-1976 after about 2 1/2 years as one Mr. R.C. Modwala was reinstated from suspension. The petitioner was not reverted as a result of departmental inquiry or misconduct. He was reverted only due to lack of vacancy. Mr. Modwala could have been transferred to somewhere if there was no vacant post at the relevant time and place. The petitioner's promotion was not subject to reinstatement of Mr. Modwala nor he was holding any lien. Hence, once promotion was given, his reversion was

illegal and unjustified and not sustainable in the eye of law. That aspect has not been considered by the respondent authority or by the appellate authority in appeal.

7. With regard to second grievance of the petitioner after reversion to the post of Jr. Clerk the petitioner was permitted to cross Efficiency Bar on 27-9-1976. After about 45 days he was superceded and his junior Mr. D.L. Rawal and three other persons were promoted to higher post by the order dated 12-11-1976 by the Department itself as there was no meeting of Departmental Promotion Committee in the year 1976 till January 1980 for taking decision. As such supersession was illegal and not justified in the eye of law at all, his name was excluded for promotion by the respondent Director on account of adverse remarks against the petitioners in his Confidential Reports for the years 1974-75 and 1975-76 and it appears that from the report of the D.P.C. dated 23-8-1976, these adverse remarks were cancelled by the Court's orders and he could not be available to appear on a particular date for interrogation before some agency and he remained on authorized absent though for which he was given assurance not to do so then his absence was to be treated as unauthorized absence but he did not do so. He requested for appointment to meet the higher officer but he was not allowed. He insisted for the same and the same was considered to be guilty for a serious misconduct as he claimed T.A. for its tour to meeting. For this purpose, he was reprimanded by the Department. In appeal, reprimand was not considered to be any kind of punishment. The appellate authority also directed that if there is any adverse remarks in the Confidential Reports of the petitioner in respect of reprimand that will stand expunged. Even then the respondent authority arbitrarily and illegally excluded his name for promotion.

8. The petitioner also contended that he was considered to be fit for promotion to higher post and promoted by the order dated 10-8-1986. But he was again reverted to lower post by the authority concerned vide order dated 23-9-1988 on the ground that some direct recruits had been appointed and the petitioner was reverted to his original lower post of Jr. Clerk. The authority concerned considered himself to be the owner of the agriculture field and whenever they like they can sow the crop and whenever they like they can cut of or uproot the crop and throw away the same arbitrarily leaving aside the general rules of the department and norms of administration and there was nothing in the name of law

before them.

9. I have considered the contentions of the party in person and perused the affidavits filed by the parties which are on record.

10. This Court by the order dated 18-2-1985 directed the petitioner to file a fresh representation before the authority concerned and the authority concerned was directed to decide the representation of the petitioner in accordance with law. Meaning thereby the authority concerned was left at liberty to decide the representation and grievances of the petitioner a fresh leaving aside the orders passed by the Tribunals or by the department concerned. Appeal No. 47/80 was decided by the Gujarat Service Tribunal on 14-4-1981 wherein it was considered by the Tribunal that the appellant was given promotion in the December 1973 presumably his Confidential Reports were sufficiently good for his promotion and his Confidential Report for the year 1973 appeared to be satisfactory. However, Confidential Reports for the period from 10-1-1974 to 17-1-1975 were not satisfactory and he was given grade below average and the same was communicated to the petitioner by the order dated 21-10-1975 and it was received by him on 23-10-1975. Confidential Reports for the period from 1-4-1975 to 2-12-1975 were also not satisfactory and the same was communicated to him by the order dated 6-9-1976 which was received by the petitioner on 9-9-1976. It appeared to the Tribunal that Confidential Report for the period from 1-4-1976 to 9-9-1976 was written in May, 1977. Hence, that report was not considered by the Selection Committee which has decided his case in the year 1976. The Tribunal held that Confidential Reports were unsatisfactory and overall picture of the work of the petitioner was not sufficiently good to select him for promotion. It was held that the respondent was justified in not promoting the petitioner when his junior was promoted by the order dated 12-11-1976. Thereafter, in November, 1976 some other juniors of the petitioner were also promoted and the petitioner was not promoted. In this respect, the Departmental Promotion Committee in pursuance of the Court's order met on 23-8-1978 at Gandhinagar and at that time the Departmental Promotion Committee considered the Confidential Reports of the petitioner and found the petitioner not fit for promotion in the month of November 1976 on the ground that there were adverse remarks in the Confidential Reports for the year 1974-75 and 1975-76. He remained on unauthorized absent from 23-3-1975 to 30-3-1975 wherein the petitioner was asked to make himself available to the agency for

interrogation and the competent authority agreed to sanction the above leave if he gives written assurance to take interest in the office work. But the petitioner did not do so. The petitioner also asked for appointment to meet the Director for giving representation on 27-3-1975 and when the appointment was not given the petitioner tried to meet the Director and presented T.A. bill. His this behaviour was considered to be serious misconduct by the Director and he was reprimanded by the office memo dated 21-1-1978 and hence the petitioner was dropped from giving promotion. So far as adverse remarks of the petitioner for the years 1974-75 and 1975-76 are concerned, they were cancelled as per the Court's orders and reprimand was considered by the appellate authority not as punishment and the appellate authority was also directed that if any entry for such reprimand has been made in the Confidential Report that will stand expunged. Merely the petitioner wanted to meet the Director and he insisted for meeting the Director and when he was refused to meet him, does not amount to any misconduct at all and there was no adverse remarks against the petitioner in the year 1976 to supercede him and therefore the petitioner was entitled to get promotion from the date 7-7-19976 when his junior Mr. Modwala was reinstated and even thereafter when he was superceded by the order 12-11-1976 and his junior Mr. Rawal was given promotion and the petitioner was excluded from consideration for promotion. Particularly, the petitioner was given selection grade and he was entitled to get promotion and he ought to have been promoted but on the reinstatement of Mr. Modwala from suspension, the petitioner was reverted. The petitioner was not reverted as a result of misconduct or as a result of finding of the departmental inquiry and he is required to be considered continue in his service as the Office Assistant (Sr. Clerk) from date of 7-7-1976 as he had been promoted to the post of Office Assistant on 18-12-1973. His promotion was not subject to lien of Mr. Modwala or subject to any condition that he will be reverted whenever any suitable candidate would be available. As such, the authorities including the appellate authority have wrongly misinterpreted that the petitioner was not found fit for promotion by the order dated 12-11-1976. When his junior Mr. Rawal was promoted and his name was excluded from consideration for promotion. Thus, the authorities have committed grave error on the face of the record in not continuing the petitioner as Office Assistant (Sr. Clerk) and erred in excluding the name of the petitioner from consideration for promotion by the order dated 12-11-1976.

11. Secondly, the petitioner was promoted to the post of Office Assistant on 15-10-1986 and he was reverted by the order dated 23-9-1988 when the direct recruits were available. There is nothing in the aforesaid promotion order as Office Assistant that his promotion as Office Assistant is subject to any availability of the direct recruits or suitable candidates. Once any person is promoted to the higher post he cannot be reverted to the lower post except on the ground of misconduct and after holding departmental inquiry and giving an reasonable opportunity of hearing in the domestic inquiry as there was no domestic inquiry wherein he was held guilty of misconduct. As such, the authorities were not justified or right in reverting the petitioner even in the year 1988 by the order dated 23-9-1988 though the petitioner filed the appeal the petitioner. But the appellate authority wrongly considered the status of the petitioner and dismissed the appeal of the petitioner.

12. The petitioner filed another appeal. The Tribunal by the order dated 20-10-1989 considered the deemed date of promotion with effect from 12-12-1976 was not at all well founded in view of the judgment and order dated 14-4-1981 of the Tribunal in Appeal No.47/80 which was decided on merits and considered that the finding of the Tribunal in Appeal No. 47/80 was perfectly justified, proper and legal as gospel truth without examining whether the petitioner was entitled for promotion from 12-11-1976. This Court has given direction to the department concerned and the appellate authority to decide the matter in accordance with law and the Tribunal has not reconsidered the decision dated 14-4-1981 in Appeal No. 47/80 in light of the contentions of the petitioners. As such, the orders of the appellate authorities dated 14-4-1981 in Appeal No.47/80 and the order dated 20-10-1989 in Appeal No. 387/88 are based on misinterpretation and against the principles of natural justice and are illegal, perverse, arbitrary and violative of Constitutional provisions. As, the impugned order dated 14-4-1981 passed in Appeal No.47/80 and order dated 20-10-1989 passed in Appeal No. 387/88 of the Gujarat Civil Services Tribunal, Gandhinagar are liable to be quashed and set aside. Therefore, the petitioner is entitled to continue in service as Office Assistant (Sr. Clerk) from the date of his reversion i.e. 7-7-1976.

13. Pursuant to the order dated 18-2-1985 of this Court, the petitioner filed representation making certain claims. The representation of the petitioner was rejected by the order dated 15-5-1985. Against that



order the petitioner filed Appeal No. 384/88. The appeal was dismissed for lack of jurisdiction by the order dated 6-4-1989. Thereafter, the petitioner preferred Review Application No. 12/89 in Appeal No.384/88. The Tribunal dismissed the said Review Application by the order dated 27-8-1990 upholding the decision of the Tribunal in Appeal No. 384/88 that the Tribunal has taken correct view about the aspects of the jurisdiction and merits of the case and the Tribunal did not find any scope for review of the reasoned judgment and order by the Tribunal u/s 12(B) of the G.S.T. Act.

14. The petitioner has made following claims :

(i) L.T.C. from Bhuj-Kutch to Home town and back to Bhuj.

(ii) Difference of 10% Addl. D.A.

In this respect, the arrears as claimed, has already been credited into G.P.F.

(iii) Pay and allowance during suspension period from 5-4-1979 to 20-5-80.

In this respect, supplementary bill has been sent to A.G. Office and the payment thereof will be made after audit is made by the A.G. Office.

(iv) Special Pay for additional charge of Sr. clerk held by the petitioner.

In this respect the request of the petitioner was not found acceptable as it was not covered under the B.C.S. Rules.

(v) Claim shown in Annexure - 4-D.

(vi) Claim as shown in Annexure C-5

A. Conversion of casual leave into leave without pay by the order dated 24/25-9-75.

In this respect, the appellate authority rejected the claim of the petitioner by the order dated 19-12-1975

B. Transfer Travelling Allowance Bill (Revised) for the journeys in May-June, 1975.

The Government has rejected the claim of  
the petitioner vide order dated 12-3-80.

C. Special Pay for handling office cash of  
the respondent no. 2 from 27-9-1976 to  
5-1-1979.

The Government was directed to expedite  
the matter. In this respect of the  
representation against arbitrary  
reprimand memo of respondent no. 3, the  
petitioner was informed that reprimand  
was not punishment and if it has been  
entered in the Confidential Report that  
charge has been directed to be expunged.

D. T.A. Bill for journey.

In this respect, the Government has  
rejected the claim of the petitioner on  
21-12-1979.

E. Campus Allowance with effect from  
27-9-1976 to 5-1-79.

This demand has already been rejected by  
the Government by the order dated  
13-8-1979.

F. T.A. Bill for the journey during  
suspension period as well as legal  
expenses.

It was held that the petitioner was not  
entitled for this claim as it does not  
fall within the schedule appended  
therefor and the Government servant can  
avail of the provisions for filing the  
appeal before the State Government under  
Rule 18 of the Gujarat Civil Services  
(Discipline and Appeal) Rules, 1971.

These claims were made by the petitioners  
as regards para 5(A), 5(B), 5(C), 5(D), 6  
(i) to 6 (vii) by the impugned order  
were not admitted by the Tribunal on the  
ground of lack of jurisdiction.

Regarding reprimand in the earlier  
portion, the appellate authority has

already directed that the reprimand does not amount punishment and if any remark has been made in the Confidential Report that would stand expunged.

15. As regard the claim under para 5 (A) for the payment of Rs.45.45 ps. for leave travelling bill and with regard to 5 (B) the respondent has admitted that the respondent no. 1 had no authority to institute the departmental proceedings and the Tribunal has given directions to the department accordingly.

16. In this respect also this Court has directed both the authorities to settle the matter with respect to the claims made by the petitioner as stated above. Learned counsel for the State informed that the petitioner has not taken any steps in compliance with the Rules for certain claims and without any compliance the respondent authority was not able to settle the matter as the claims made by the petitioner were disputed claims and this Court cannot decide the disputed facts and claims of the petitioner. Hence, this Court is unable to decide them. Thus, Special Civil Application No. 1362/91 is liable to be dismissed and accordingly S.C.A. No. 1362/91 is hereby dismissed and the orders passed by the respondents are confirmed. Rule is discharged with no order as to costs in Spl. C.A. No. 1362/91.

17. While, Spl. C.A. No.60/91 is hereby allowed and the judgment and order dated 14-1-1981 of the Gujarat Civil Services Tribunal, Gandhinagar in Appeal No. 47/80 and the judgment and order dated 20-10-1989 in Appeal No. 387/88 of the Gujarat Civil Services Tribunal, Gandhinagar as well as the order dated 7-7-1976, order dated 12-11-1976 and the order dated 23-9-1988 passed by the respondent Director, are hereby quashed and set aside. The respondent is directed to treat the petitioner in continuous service as Office Assistant (Sr. Clerk) with effect from 7-7-1976 and the respondent Director shall give all consequential benefits. The respondent - Director is further directed to calculate difference of pay, allowances and other benefits permissible under the Rules till his retirement date within three months from today and to pay the same within two months thereafter. Rule is made absolute to the aforesaid extent, with no order as to costs in Spl. C.A. No. 60/91.

In this case the petitioner himself was appearing as party in person and hence the office is directed to inform the petitioner about result of these

petitions.

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